

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 49-407-12-1-5-20411-15
Petitioners: Frederick W. & Lauri DeVries
Respondent: Marion County Assessor
Parcel: 49-01-32-103-031.000-407
Assessment Year: 2012

The Indiana Board of Tax Review (Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioners initiated their 2012 assessment appeal with the Marion County Assessor on January 18, 2013.
2. On June 26, 2015, the Marion County Property Tax Assessment Board of Appeals (PTABOA) issued its final determination denying the Petitioners any relief.
3. The Petitioners timely filed a Petition for Review of Assessment (Form 131) with the Board, electing the Board's small claims procedures.
4. The Board issued a notice of hearing on March 9, 2017.
5. Administrative Law Judge (ALJ) Patti Kindler was scheduled to hold the Board's hearing on April 18, 2017, at 3:15 p.m. in the Indiana Government Center South (Conference Room 6) located at 302 West Washington Street in Indianapolis. The Petitioners were present and ready to proceed with the hearing. The Respondent failed to appear.
6. The ALJ verified that the notice of hearing was not returned as undeliverable and verified the Respondent had not contacted the Board. After waiting approximately 20 minutes past the scheduled hearing time, the ALJ proceeded with the hearing as scheduled with the Petitioners present. The ALJ did not inspect the property. Lauri DeVries appeared *pro se* and was sworn as a witness. Peggy Pfister was sworn as a witness for the Petitioners.

Facts

7. The property under appeal is an unimproved residential lot located at 6614 Hidden Oak Lane in Indianapolis.
8. The PTABOA determined a total land assessment \$61,900.

9. On their Form 131, the Petitioners requested a total land assessment of \$40,000. At the hearing, the Petitioners requested a total land assessment of \$45,000.

Record

10. The official record for this matter is made up of the following:

- a) Form 131 with attachments,
- b) A digital recording of the hearing,
- c) Exhibits:

- Petitioners Exhibit 1: “2011 Indiana Gateway Sales Disclosures” for vacant lots in Marion County,
- Petitioners Exhibit 2: Property record card for 6617 Hidden Oak Lane,
- Petitioners Exhibit 3: Page 2 of the Form 131 listing the Petitioners comparable assessments and sales,
- Petitioners Exhibit 4: Property record card for 10356 Plumas Lane,
- Petitioners Exhibit 5: Property record card for 10408 Plumas Lane,
- Petitioners Exhibit 6A: Property record card for 10418 Plumas Lane,
- Petitioners Exhibit 6B: Property record card for 6467 Timber Leaf Lane,
- Petitioners Exhibit 7: Property record card for 10346 Plumas Lane,
- Petitioners Exhibit 8: Property record card for 6634 Nantahala Drive,
- Petitioners Exhibit 9: Property record card for 6931 Royal Oakland Drive,
- Petitioners Exhibit 10: Property record card for 6604 Hidden Oak Lane,
- Petitioners Exhibit 11: Sales listing for 6624 Hidden Oak Lane,
- Petitioners Exhibit 12: Docket of appeals attached to the PTABOA’s agenda for May 15, 2015,
- Petitioners Exhibit 13: Docket of appeals attached to the PTABOA’s agenda for June 26, 2015,
- Petitioners Exhibit 14: PTABOA minutes from May 15, 2015,
- Petitioners Exhibit 15: PTABOA minutes from June 26, 2015, with a listing of subdivision appeals.

- Board Exhibit A: Form 131 with attachments,
- Board Exhibit B: Notice of hearing dated March 9, 2017,
- Board Exhibit C: Hearing sign-in sheet,
- Board Exhibit D: Proof of mailing dated March 9, 2017.

- d) These Findings and Conclusions.

Summary of the Petitioners' Contentions

11. The subject property's assessment is too high. In support of her argument, Ms. DeVries presented data on recent sales and assessments of comparable properties. *DeVries argument; Pet'rs Ex. 1, 2, 3, 9, 11.*
12. Ms. DeVries presented a 2011 sales disclosure list for vacant lots in the subject property's neighborhood. The first property she analyzed is located across the street at 6617 Hidden Oak Lane. This 0.361-acre lot sold for \$45,000 on June 8, 2011.¹ The subject property's assessment should "mirror the sale price" of this lot. *DeVries testimony; Pet'rs Ex. 1, 2, 3.*
13. The second lot, measuring 0.307-acres is located at 6931 Royal Oakland Drive. This lot sold for \$46,000 on January 20, 2011. *DeVries testimony; Pet'rs Ex. 1, 3, 9.*
14. A third lot, located at 11621 Admirals Lane sold for \$57,500 on September 23, 2011. This lot measures 0.80-acres, roughly three times larger than the subject property. *DeVries testimony; Pet'rs Ex. 1, 3.*
15. Sale prices in the vicinity of the subject property are "trending down" and properties are not "maintaining their values." For example the lot located at 6624 Hidden Oak Lane sold for \$30,000 on February 17, 2015. *DeVries argument; Pet'rs Ex. 11.*
16. The subject property is also over-assessed when compared to the assessments of other lots located in similar subdivisions. Ms. DeVries selected comparable lots located less than half-a-mile from the subject property:²
 - 10356 Plumas Lane, a 0.31-acre homesite, with a land assessment of \$46,500.
 - 10408 Plumas Lane, a 0.31 acre homesite, with a land assessment of \$46,500.
 - 10418 Plumas Lane, a 0.31 acre homesite, with a land assessment of \$46,500.
 - 6467 Timber Leaf Lane, a 0.36 acre homesite, with a land assessment of \$42,800.
 - 10346 Plumas Lane, a 0.31 acre homesite, with a land assessment of \$46,500.
 - 6634 Nantahala Drive, a 0.318 acre homesite, with a land assessment of \$47,700.
 - 6617 Hidden Oak Lane, a 0.361-acre homesite that sold for \$45,000 on June 8, 2011, but was assessed in 2011 for \$70,300.

DeVries testimony; Pet'rs Ex. 3, 4, 5, 6A, 6B, 7, 8.

¹ This lot's address is erroneously listed as 10704 Timber Oak Circle on the Indiana Gateway Sales Disclosure sheet. The parcel number (49-01-32-103-021.000-407), sales price, and acreage coincide with 6617 Hidden Oak Lane in Indianapolis. According to the sales disclosure sheet, this lot sold on May 23, 2011, but the transfer date on the property record card indicates the property sold on June 8, 2011. *Pet'rs Ex. 1, 2.*

² Ms. DeVries also vaguely referenced a 0.277-acre lot located in the subject property's subdivision that was assessed at \$49,600. *Pet'rs Ex. 10.*

17. Finally, Ms. DeVries cast doubt on the actions of the PTABOA. According to Ms. DeVries, the PTABOA “initially decided” to lower the 2012 assessment back to the previous year’s assessed value of \$50,800. But after deliberation, the PTABOA “tabled the decision and apparently held another hearing in which they would not let the Petitioners speak.” On June 26, 2015, the PTABOA “inexplicably ruled” that no change would be made to the 2012 assessment. *DeVries testimony; Pet’rs Ex. 12, 13, 14, 15.*

Burden of Proof

18. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass’r*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230, 1233 (Ind. Tax Ct. 1998). The burden-shifting statute as amended by P.L. 97-2014 creates two exceptions to that rule.
19. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
20. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and has application to all appeals pending before the Board.
21. Here, as previously discussed the Respondent failed to attend the hearing. As such, the only evidence on record is what was presented by the Petitioners. The Petitioners provided their Notice of Assessment of Land and Structures (Form 11) listing both the 2012 and 2011 total assessments. According to the Form 11, the 2011 total assessment was \$50,800 and the 2012 total assessment was \$61,900. Based on this evidence, it is clear the 2012 assessment increased by more than 5% from 2011 to 2012. Therefore, according to the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 the Respondent has the burden of proving that the 2012 assessment is correct. To the extent the Petitioners request an assessment below the 2012 level of \$50,800; they have the burden to prove that lower value.

Analysis

22. The Respondent failed to make a prima facie case that the 2012 assessment is correct.
- a) Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
 - b) Regardless of the method used to prove true tax value, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2012 assessment, the valuation date was March 1, 2012. *See* Ind. Code § 6-1.1-4-4.5(f).
 - c) Here, the Respondent had the burden of proof. Again, the Respondent failed to appear and failed to provide any evidence to establish that the 2012 assessment is correct. The Board bases its decision on the evidence presented and the issues raised during the hearing and will not make a case for the Respondent. *See Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118-1119 (Ind. Tax Ct. 1998).
 - d) Consequently, the Respondent failed to make a prima facie case that the 2012 assessment is correct. Therefore the Petitioners are entitled to have their assessment returned to its 2011 value of \$50,800. The Board's inquiry does not end here because the Petitioners requested a lower value. The Board now turns to the Petitioners' evidence.
 - e) The Petitioners claim sales of purportedly comparable properties support their argument that the subject property is over assessed. In making this argument, the Petitioners essentially rely on a sales-comparison approach to establish that the assessment should be lowered. *See* 2011 REAL PROPERTY ASSESSMENT MANUAL at 9 (incorporated by reference at 50 IAC 2.4-1-2)(stating that the sales-comparison approach relies on "sales of comparable improved properties and adjusts the selling prices to reflect the subject property's total value."); *see also, Long*, 821 N.E.2d 466, 469.
 - f) To effectively use the sales-comparison approach as evidence in a property assessment appeal, the proponent must establish the comparability of the properties

being examined. Conclusory statements that a property is “similar” or “comparable” to another property do not constitute probative evidence of the comparability of the two properties. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*

- g) Here, the type of analysis required is lacking from the Petitioners’ analysis. The Petitioners’ evidence fails to provide enough information for the Board to conclude the purportedly comparable properties are indeed comparable to the property under appeal. Moreover, the Petitioners failed to identify or quantify any differences between the purportedly comparable properties and the subject property. Thus, the Petitioners’ sales-comparison analysis lacks probative value.
- h) The Petitioners also presented an assessment comparison analysis including nearby purportedly comparable properties. Indeed, parties can introduce assessments of comparable properties to prove the market value-in-use of a property under appeal, provided those comparable properties are located in the same taxing district or within two miles of the taxing district’s boundary. Ind. Code § 6-1.1-15-18(c)(1). The determination of whether the properties are comparable using the “assessment comparison” approach must be based on generally accepted appraisal and assessment practices. *Indianapolis Racquet Club, Inc. v. Marion Co. Ass’r*, 15 N.E.2d 150 (Ind. Tax Ct. 2014). In other words, the proponent must provide the type of analysis that Long contemplates for the sales comparison approach. *Id.*; *see also Long*, 821 N.E.2d at 471 (finding sales data lacked probative value where the taxpayers did not explain how purportedly comparable properties compared to their property or how relevant differences affected value).
- i) While the Petitioners introduced property record cards for the purportedly comparable properties, they failed to offer any meaningful testimony relating each property’s specific features and characteristics to the subject property. Again, the type of analysis and related adjustments required for a probative comparison are lacking. Thus, the Petitioners’ presentation of comparable assessments lacks probative value. For these reasons the Petitioners failed to make a case that the assessment should be reduced below the 2011 level of \$50,800.
- j) Finally, the Board will address the Petitioners’ plight with the PTABOA process. Once a taxpayer has properly invoked the Board’s jurisdiction, such as the case here, the Board’s proceedings are *de novo*. The Board owes no deference to the PTABOA’s determination. *See* Ind. Code § 6-1.1-15-4. Here, the PTABOA’s actions did not hinder the Petitioners’ opportunity to present relevant evidence and argument during the Board’s hearing.

Conclusion

23. The Respondent had the burden of proving the 2012 assessment was correct. For the reasons stated above, the Respondent failed to make a prima facie case, thus the assessment must be reduced to the previous year's amount. The Petitioners sought an assessment lower than the 2011 level but likewise failed to make a prima facie case. Thus, the Board orders the subject property's 2012 assessment be reduced to the 2011 value of \$50,800.

Final Determination

In accordance with the above findings of fact and conclusions of law, the 2012 assessment must be changed to \$50,800.

ISSUED: July 13, 2017

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.